

conjunction with an appropriate type of vehicle or driver inspection.

(c) Guidelines for the preparation of the SEP are provided in appendix A to this part.

(Approved by the Office of Management and Budget under control number 2125-0536)

**§ 350.15 Certification of compliance by State.**

The FHWA will accept a certification, executed by the Governor, the State's Attorney General or other State official specifically designated by the Governor, in the form provided in appendix B to this part, that the State is in compliance with the conditions of § 350.9 of this part. The certification shall accompany the SEP and be made part thereof. The certification shall be supplemented by a copy of any State law, regulation or forms pertaining to commercial motor carrier safety adopted since the State's last certification, if any, which bear on the items listed in the certification. The certificate should acknowledge that activities described in § 350.9 will be performed.

**§ 350.17 Maintenance of effort.**

(a) No SEP shall be approved or grant awarded in the absence of a commitment by the State to maintain the aggregate expenditure of funds by the State for commercial motor vehicle and highway hazardous materials safety programs as provided in this section.

(b) The State shall certify each year that the level of State funding for the 12-month period covered in the SEP for motor carrier and highway hazardous materials safety, size and weight, traffic safety and drug interdiction enforcement purposes shall not fall below the average aggregate expenditure of funds, exclusive of Federal funds and any State matching funds used to receive Federal funding, for those purposes in the base period of three full fiscal years prior to December 18, 1991. The State may elect to use either Federal fiscal years or State fiscal years at its option.

(c) In determining whether a State has complied with this maintenance of effort commitment, expenditures of State funds for federally sponsored

demonstration or pilot programs need not be included in aggregating expenditures in the base period.

(d) For the purpose of determining the State's expenditures in the base period, only costs associated with activities performed by State or local agencies currently receiving or projected to receive funds under this part must be counted, and only those activities which meet the most current requirements for funding eligibility under the grant program must be included.

(e) If it is determined that a State has not maintained its level of expenditures as certified, the State shall be notified of the deficiency. Upon receipt of such notification, the State shall have the opportunity to submit information to substantiate the certification.

(f) If, after consideration of all information, it is finally determined that a State has failed to meet its maintenance of effort requirement, an amount equal to the deficiency shall be deducted from the State's current allocation. That amount will then be available for reallocation under § 350.21 of this part.

**§ 350.19 Grant application submission.**

A State shall submit its application to the FHWA division office on or before August 1 of each year. The time for submitting a plan may be extended for a period not to exceed 30 calendar days for good cause shown. Grants are approved for the fiscal year for which application is made. Failure of a State to submit a plan for any given fiscal year will preclude consideration of grant approval for that State for that year.

**§ 350.21 Distribution of funds.**

(a) The Federal share payable to reimburse States for eligible costs incurred in the administration of a commercial motor carrier safety program shall not exceed 80 percent.

(b) The FHWA will, upon request, waive the requirement for matching funds to be provided by the Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Marianas.

(c) The funds available to any State for a basic grant in any one year shall

be distributed according to an allocation formula based on the most recent reliable data concerning the following factors in equal proportion:

- (1) Road mileage (all highways);
- (2) Vehicle miles travelled (all vehicles);
- (3) Number of commercial vehicles over 10,000 pounds (gross vehicle weight rating);
- (4) Population (most current census); and
- (5) Special fuel consumption (net after reciprocity adjustment).

(d) Subject to the availability of funds, the individual allocations shall be adjusted so that no State qualifying for an award shall be allocated more than a ceiling amount, which shall be no less than the ceiling amount used in the previous year's distribution process. The ceiling shall be increased each fiscal year in proportion to the amount of increase in the funds available for distribution in that fiscal year. The allocation formula shall also be adjusted so that no State qualifying for an award shall be allocated:

- (1) Less than the basic allocation of funds received in the 1991 fiscal year, provided the SEP continues to support that level of funding; or
- (2) Less than 0.5 percent of the total amount allocated to all States (or \$250,000, whichever is greater).
- (3) Beginning on October 1, 1994, and each October 1 thereafter, more than 50 percent of the basic formula allocation provided for in this section if any such State has adopted and is enforcing compatible regulations applicable to interstate transportation, but has not adopted or is not enforcing compatible regulations applicable to intrastate transportation.

(e) Funds will be allocated to States in recognition of innovative, successful, cost efficient or cost effective programs to promote commercial motor vehicle safety and hazardous materials transportation safety and provide incentives to States that conduct traffic safety enforcement activities done in conjunction with motor carrier safety inspections. The allocations will be done in three separate grants:

- (1) Basic grants—funds used to perform commercial vehicle safety activities such as driver/vehicle inspections,

safety reviews and compliance reviews. Allocation for basic grants will be made pursuant to paragraphs (c) and (d) of this section. Unused basic allocations will be periodically redistributed. Any eligible MCSAP activity can be included under the State's basic grant activities.

(2) Supplemental grants—funds used to conduct additional activities or innovative programs demonstrated to be effective and cost-efficient, and may include emphasis areas established by policy in consultation with the States. To be eligible for a supplemental grant, a State must qualify for a basic grant. Unused supplemental grant funds will be periodically redistributed among those States that are able to demonstrate innovative, cost-effective purposes consistent with the objectives of this part.

(3) Special grants—funds used by States to meet the conditions in §350.9 regarding eligibility requirements for basic grants; or for States already participating in the basic program, to develop the prerequisites for expanded activities not presently part of their basic programs. Special grants are also available for research or data collection activities, or for projects specifically identified by statute, as, for example, commercial driver's license enforcement. To be eligible for a special grant, a State need not qualify for a basic grant.

(f) Notwithstanding any other provisions of this section, funds which have not been awarded to States under application of the allocation formula and the provisions for additional allocations contained in this section may be redistributed at the discretion of the Administrator. Subject to the availability of funds, the primary purpose of any such redistribution is to prevent a decrease in the amount of Federal funds used by particular States in previous years to support effective and innovative programs. Preference will be given to those States which have maintained effective federally assisted programs at levels beyond that possible if limited to formula allocations.

(g) The funds obligated by a State will remain available to the State for a period of the fiscal year in which obligated and the next full fiscal year. Any

unexpended obligations which are to be carried over to the next fiscal year must be accounted for in the new SEP for that fiscal year. Funds must be expended in the order in which they are obligated.

[57 FR 40956, Sept. 8, 1992, as amended at 59 FR 5264, Feb. 3, 1994]

**§ 350.23 Acceptance of State plan.**

(a) Each plan will be reviewed for content, after which the State will be notified of its acceptance or rejection.

(b) The time for submitting a plan may be extended for a period not to exceed 30 calendar days for good cause shown.

(c) Each State plan shall include an analysis of the effectiveness of its prior year's plan in reaching the stated objectives. The State will be advised whether any changes are needed in the plan or in its intended objectives.

**§ 350.25 Effect of failure to submit a satisfactory State plan.**

(a) A State will be notified in writing that approval of the plan is being withheld along with the reasons for such action, if:

(1) It is determined that a plan does not meet the requirements described in §§ 350.9 and 350.13; or

(2) It is determined that an SEP is not adequate to ensure effective enforcement of the FMCSR and FHMR; or compatible State rules.

(b) The State shall have 30 calendar days from the date of the notice to modify the plan and resubmit it for approval.

**§ 350.27 Procedure for withdrawal of approval.**

(a) If a State is not performing according to an approved plan or a State is not adequately enforcing the FMCSR and FHMR, or compatible State rules, the Administrator shall issue a written notice of proposed determination of nonconformity to the Governor of the State or the official designated in the plan. The notice shall state the reasons for the proposed determination and inform the State that it may reply in writing within 30 calendar days from the date of the notice. The reply should address the deficiencies cited in the no-

tice and provide documentation as necessary.

(b) The Administrator's decision, after notice and opportunity for comment, will constitute the final decision of the FHWA. An adverse decision will result in immediate cessation of Federal participation in the plan.

(c) If the State does not respond to a notice of proposed determination of nonconformity as provided in paragraph (a) of this section, the proposed determination shall become the Administrator's final decision with the same effect as paragraph (b) of this section.

(d) Any State aggrieved by an adverse decision issued under this part may seek judicial review pursuant to 5 U.S.C. ch. 7.

**§ 350.29 Eligible costs.**

(a) Work must be performed pursuant to an acceptable State plan in order for the cost of that work to be eligible for reimbursement. The eligible costs under the grant program are comprised of the allowable direct costs incident to the State's performance and its allocable portion of allowable indirect costs, less applicable credits.

(b) The primary functions to be performed under a basic grant are uniform roadside inspections and safety and compliance reviews with follow-up enforcement actions or compliance measures. Consequently, the major cost will be compensation and expenses of the personnel required to perform these functions.

(c) Subject to paragraph (c)(5) of this section, funds may also be used for:

(1) Enforcement of size and weight limitations;

(2) Detecting the unlawful presence of controlled substances in a commercial motor vehicle or on the person of any occupant (including the operator) of such a vehicle;

(3) Enforcement of State traffic laws and regulations designed to promote safe operation of commercial motor vehicles; and

(4) Sanitary food transportation inspections pursuant to 49 U.S.C. 2808.

(5) *Provided:* these activities are carried out in conjunction with an appropriate type of inspection for enforcement of safety regulations. Size and